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DATE: June 23, 2005 **ATTORNEY DOCKET NUMBER:** BSS 6426.1
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Applicant's Name: Jeffrey S. Brooks

Serial No. (Control No.): 10/685,059 **Examiner:** T. Courson

Filing Date: 10/14/03 **Art Unit:** 2859 **Confirmation No.:** 5710

Application Title: FOOT SCANNING AND MEASUREMENT SYSTEM AND METHOD

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BSS 6426.1
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Brooks Art Unit 2858
Serial No. 10/685,059
Filed October 14, 2003
Confirmation No. 5710
For FOOT SCANNING AND MEASUREMENT SYSTEM AND METHOD
Examiner Tania C. Courson

June 23, 2005

LETTER TO PATENT AND TRADEMARK OFFICE AFTER FINAL REJECTION

To the Commissioner
Dear Sir:

This communication in response to the Office action dated April 12, 2005.

The undersigned appreciates the courtesy of a telephone interview with the Examiner on June 2, 2005, during which no agreement was reached regarding the patentability the claims.

For the reasons during the interview and restated below, applicant respectfully submits that the pending claims in their current form are patentable over the prior art of record, including Gould et al. and Bliss.

Gould et al. describes an apparatus comprising a light source (28), grating (41), camera (46), and computer (not shown). The light from the light source passes through the grating at an angle and strikes the foot, producing shadow lines on the bottom of the foot. (Col. 4, line 48). The camera is positioned to view the foot through the grating. Because the light source strikes the grating at a first direction (38) (which is different from the direction (48) at which the camera views the foot, the shadow lines interfere with the straight lines of the grating to produce a fringe pattern, as shown in Fig. 5 and described in

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col. 5, lines 31-35. A snapshot image from the camera (showing the fringe pattern) is downloaded on the computer in digital form. (Col. 6, lines 10-19.) The computer analyzes the image (using the pixels of the digital image) to extract information about the foot to develop an entire topography of the foot for use in designing an orthotic. (Col. 11, lines 62-68; col. 2, lines 4-7.)

As recognized by the examiner, Gould et al. fails to show foot measuring indicia superimposed on bottom surface of a foot visually indicative of foot size. All claims of this application include this requirement.

Bliss describes an apparatus comprising an X-ray cassette (27) or screen (36) for fluoroscopy laid on a solid platform (15). The cassette and screen have scales for showing foot size. In use, the cassette (27) or screen (36) is either placed on the platform (15) or underneath the platform, and X-rays are passed down through the feet of a person to produce an image of the foot (i.e., outline of feet and bone structure). There is no opening in the platform (15), and the device does not produce an image of the bottom surface of the foot. Instead, what is produced is an outline of the feet and of bone structure, superimposed on the scale. (Col. 1, lines 41-45).

It is the examiner's position that it would be obvious in view of Bliss to modify the apparatus in Gould et al. to include a scale (presumably on the grating), and that such a scale would provide foot measuring indicia superimposed on the bottom of the foot visually indicative of foot size. Applicant respectfully disagrees on the ground that there one of ordinary skill would not be motivated to make such a modification. The apparatus in Gould et al. uses shadow lines, cameras and computer analysis to measure various foot size characteristics. Why would one skilled

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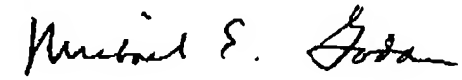
in the art be motivated to use a scale in the Gould et al. device when any such scale would have no purpose? The computer does not need such a scale to measure foot size. Instead, the computer measures foot size, among many other characteristics, by digital analysis of the downloaded camera image of the foot. A visual scale for the purpose of determining foot length would be entirely superfluous. Further, as previously noted, Gould et al. uses a computer to determine the entire topography of a foot, including height and shape information. A scale visually indicative of foot size would not satisfy this need, further reinforcing the notion that any such scale would have no value in Gould et al.

For these reasons, it is submitted that a *prima facie* case of obviousness has not been established. Accordingly, applicant requests that the rejection of the pending claims be withdrawn, and that the application be allowed. In the event the rejection is not withdrawn applicant intends to take advantage of the Pre-Appeal Brief Conference Pilot Program recently implemented by the PTO.

Respectfully submitted,



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